

Per Curiam

CROWELL, SECRETARY OF STATE OF TENNESSEE,  
ET AL. v. MADER ET AL.

ON PETITION FOR REHEARING

No. 78-1780. Judgment vacated and case remanded October 1, 1979—  
Rehearing granted and case decided February 19, 1980

After the State had appealed to this Court from the District Court's judgment invalidating a legislative senatorial districting plan, the Tennessee Legislature enacted a new plan. This Court then vacated the District Court's judgment and directed that the action be dismissed as moot.

*Held:* Since the recent legislation did not moot the entire case, but only the issue raised on appeal, this Court's prior order is vacated and, in lieu thereof, the District Court's judgment is vacated without prejudice to such further proceedings in that court as may be appropriate.

Rehearing granted; vacated.

PER CURIAM.

The petition for rehearing is granted.

In *Kopald v. Carr*, 343 F. Supp. 51 (MD Tenn. 1972), the District Court applied this Court's earlier holding in *Baker v. Carr*, 369 U. S. 186 (1962), to invalidate two senatorial districting plans. That decision resulted in the formulation of a so-called court ordered "Kopald Plan." That plan was superseded by a 1973 legislative plan.

In this litigation the District Court invalidated the 1973 legislative plan. It enjoined the defendants from conducting any elections pursuant to that plan and retained jurisdiction to review whatever substitute the Tennessee General Assembly might enact prior to June 1, 1979, or, if necessary, to reinstate the 1972 "Kopald Plan." The court further ordered a hearing to award fees to plaintiffs' counsel.

In response to the State's appeal to this Court, appellees pointed out that the legislature had enacted a new plan effective on June 6, 1979, argued that the controversy over the

validity of the 1973 legislative plan had therefore become moot, and requested that the appeal therefore be dismissed. This Court, following a practice that is appropriate when an entire case has become moot but which is inappropriate when only the issues raised on appeal have been resolved, entered an order directing that the judgment of the District Court be vacated and that the entire action be dismissed as moot. *Post*, p. 806.

The recent legislation did not moot the entire case, but only the issues raised on appeal. Appellees may still wish to attack the newly enacted legislation or apply for attorney's fees. We therefore vacate our prior order. In lieu thereof, we direct that the judgment of the District Court be vacated without prejudice to such further proceedings in the District Court as may be appropriate. See *Diffenderfer v. Central Baptist Church*, 404 U. S. 412 (1972).

*It is so ordered.*